

Court
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JUDGE'S COPY

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIAFILED
HARRISBURG, PA VS.MAY 31 2001
KENNETH KYLER ET AL.)

CIVIL NUMBER: 1:00-cv-01846

MARY E. D'ALESSANDRA, CLERK
PerAFFIDAVIT IN SUPPORT OF PLAINTIFF BRIEF IN OPPOSITION OF DEFENDANT(S)
MOTION TO DISMISS

JEFFERY MOSER, BEING DULY SWORN, DEPOSES AND SAY'S:

I AM THE PLAINTIFF IN THE ABOVE ENTITLED CASE, I MAKE THIS AFFIDAVIT
IN SUPPORT OF MY BRIEF IN OPPOSITION! (PLAINTIFF KNOWN AS "MOSER" HEREAFTER)

1.) PLAINTIFF REQUEST THE HONORABLE COURT TO ENTER INTO RECORD (EXHIBIT (A))
AS THE PLAINTIFF "BRIEF" IN OPPOSITION WHICH WAS FILED BEFOREHAND 5/3/2001
AS A DECLARATION, THE WORD BRIEF HAS BEEN AMENDED IN, AND ALSO REQUEST
THIS AFFIDAVIT AND BRIEF BE CONSIDERED TOGETHER (EN WHOLE), AS THE
DEFENDANT(S) WERE AFFORD A CHANCE TO ANSWER TWICE ONCE BEFORE THE
DECLARATIONS AND ONCE AFTER. "MOSER" WISHES THE COURT TO MAKE NOTE,
THAT HE IS A DISABLE PRISONER (A.D.A APPROVED BY A.D.O.C.C) WHO IS IN
FACT (1ST) (FIRST FLOOR RESTRICTED) DUE TO HIS DISABILITIES AND ON DIRECT ORDER
OF THE D.O.C. MEDICAL STAFF & ADMIN. (EXCEPT FOR RELIGIOUS EVENTS), AND HAS
MUCH TROUBLE GETTING TO THE "PRISON LAW LIBRARY" REGULARLY AS IT IS
IN THE (2ND) FLOOR, AND IS NOT AFFORD "LEGAL ACCESS" TO THE PRISON
LAW LIBRARY AT S.C.T. HARRISBURG, AS MOSER FEARS A MISCONDUCT FOR
BREAKING PROTOCOL (order) AND FOR FURTHER HARM TO HIMSELF, FOR THIS
REASON MOSER ASK THE COURT TO UNDERSTAND AND MAKE ALLOWANCE FOR THIS
REQUESTED FILING, AS "MOSER" IS UNABLE TO FILE A COMPETENT BRIEF WITH
OUT THE LAW LIBRARY AND WITH ONLY THE ASSISTANCE OF LEGAL MATERIALS
WITHIN HIS CELL AS THE LAW LIBRARY AT S.C.T. HARRISBURG MAKES NO
SPECIAL PROVISIONS FOR DISABLED (RESTRICTED) PRISONER TO A.D.A. COMPLIANCE

2.) THE CORRECTIONAL DEFENDANT(S) CLAIM "QUALIFIED IMMUNITY",
MOSER FILES HIS Formal opposition TO THIS CLAIM, AS MOSER

-(CONTINUED)-

BELIEVES THAT (ALL) THE D.O.C. (Dept. of Corrections) Defendants(s) ACTED IN THERE "Individual Capacities" outside the color of Law, AND Furthermore ARE NOT Protected in THIS CASE OF LIABILITY, "THE ELEVEN Amendment does NOT IMMUNIZE STATE OFFICIAL FOR ACTION TAKEN IN THESE INDIVIDUAL CAPACITIES" (SULLIVAN VS. BARNETT , 139 F.3d 15 (3rd Cir. 1998) (SCHWEIER VS. RHODES , 416 U.S. 932 , 837-38 , 40 LED 2D 90, 94 S.C.T 1683 , 1686-87 (1974) (MITCHELL VS. DUPNIK , 75 F.3d 517 (9th Cir. 1995) (Hunt VS. BENNETT , 17 F.3d 1263 (10th Cir. 1994) (HILL VS. MARSHALL 962 F.2d 1209 (6th Cir. 1992) (SMITH VS. WADE , 103 S.C.T. 1625 (1993) MOSER, BELIEVES HE HAS SUFFER GREATLY DUE TO THE ACTION(S) OF THE D.O.C. AND OTHER DEFENDANT(S) ACTING ON THEIR OWN, IN VIOLATION OF MOSER CONSTITUTIONAL RIGHTS AND FOR PHYSICAL WELL BEING, AND CAN PROVE SUCH AT TRIAL, AS SUPPORTED BY CASE LAW D.O.C. DEFENDANT(S) ARE NOT IMMUNE IN THIS ACTION AND "SHOULD NOT" BE DISMISSED OUT OF THIS ACTION BY THE HONORABLE COURT IN THE INTEREST OF JUSTICE. THE PLAINTIFF IS NOR OPPOSED TO NEGOTIATE THE REMOVAL OF SOME D.O.C. DEFENDANT(S) WITH D.O.C. DEFENDANT COUNSEL EX-PARTÉ IF THE COURT PERMIT SUCH. PLAINTIFF WILL ONLY CONSIDER NEGOTIATING WHERE THAT DEFENDANT HAS MADE AN HONEST EFFORT TO RECLIFY THIS SITUATION AND HAS REFRAMED FROM FULL RETALIATION TOWARDS THE PLAINTIFF...

3.) THE DEFENDANT(S) CLAIM THAT DC-ADM-804 AFFORDS INMATES MURKIN DAMAGES. MOSER OPPOSES THIS CLAIM. AS THIS ALLEGED INFORMATION IS "ONLY" NOTED ON A INNER OFFICE CORRESPONDENCE ADDRESSED TOO: "EXECUTIVE STAFF & SUPERINTENDENTS" NOT INMATES "GENERAL DISTRIBUTION", MOSER HAS NEVER SEEN THIS ALLEGED DOCUMENT until now, NOR IS SUCH INFORMATION STATED IN GENERAL POLICY INFORMATION (INMATE GRIEVANCE SYSTEM DC-ADM-804 OCT, 20, 1994 (1998) (BEFORE HAND AND 1998 (OR) IN THE NEW POLICY PROTOCOL THAT CAME OUT ~~AS~~ TO EFFECTIVE DATE JAN. 1ST, 2001) "AFTER THIS ACTION WAS FILED" NOR, IS STATED ON THE INMATE GRIEVANCE IT SELF (SEE EXHIBIT (B)). MOSER BELIEVES IT SHOULD BE CLEAR TO THE HONORABLE COURT, THAT THIS IS INFORMATION THAT KEPT SECRET AMONG EXECUTIVE STAFF, NOT MADE AVAILABLE TO THE PLAINTIFF IN AN EFFORT TO ESCAPE MURKIN RESPONSIBILITY, FOR PROCEDURAL DEFECTS ON THE MERIT OF THE CASE, IN THE EVENT OF CIVIL LITIGATION. A PRIVATE LOOTABLE TACTIC TO ABUSE THE PLAINTIFF RIGHTS AND SUIT THE HONORABLE COURT. (ADM-804 (1994) 3' (2001) ARE ATTACHED TO DEFENDANT(S) FILED. without THIS INFORMATION ENCLOSED. (Oppos' Here FILED) .. -(CONTINUED)-

4.) THE DEFENDANT(S) STATED THEY "APPROVED & COMPLIED" WITH MOSER A.D.A REQUEST. PLAINTIFF FILES HIS OPPOSITION TO THIS STATEMENT "AS NOT TRUE IN PART".

YES, AGREED THE DEFENDANTS DID AGREE AND AFFIRM MOSER DISABILITY PERSON STATUS, (AND) OR NEEDS.

NO, THE DEFENDANT(S) DID NOT, COMPLY WITH MOSER A.D.A REQUEST (APPROVED) OTHER TIERS TO TRANSFER MOSER, TO A NON-A.D.A. COMPLIANT PRISON, WHICH REFUSES RECOGNIZE MOSER MEDICAL & HOUSING NEEDS AS A "APPROVED" DISABLED PERSON AND STRONGLY DISCRIMINATE TOWARD MOSER AS A A.D.A. PROTECTED DISABLED PERSON. MOSER UNDERSTANDS THAT ONLY (4) OF ALL P.A. D.O.C. PRISONS COME CLOSE TO A.D.A. COMPLIANCE, AND THE DISCRIMINATION TOWARD THE DISABLE PRISONER IN PENNSYLVANIA PRISON IS STATEWIDE, IGNORING THE RULING OF THE HONORABLE COURTS AND ACTS OF CONGRESS (YESKEY VS. PA.

D.O.C. 118 U.S. S.C.T 1958 (1999) & AMERICANS WITH DISABILITIES ACT OF 1990. BUT, MOSER FEELS ALL HIS A.D.A. COMPLIANCE REQUEST ARE "PENNSYLVANIA AND UNACTED ON, EXCLUDING THE TRANSFER." IN VIOLATION OF MOSER CONSTITUTIONAL & DISABLED PERSONS RIGHTS AS AN AMERICAN CITIZEN.

THEREFORE, THIS IS AN A.D.A. (F.U.T. ACTION BROUGHT BY A DISABLED AMERICAN CITIZEN (IN MAJOR PART) IN WHICH D.O.C. DEFENDANT(S) AND MEDICAL DEFENDANT(S) ARE EQUALLY CULPABLE IN. (PLEASE SEE EXHIBIT (C))

MOSER, BEG'S TO SHOW THE HONORABLE COURT THAT THE DEFENDANT(S) CONTINUE DAILY IN THERE DISCRIMINATORY EFFORTS TOWARDS MOSER AND/OR THE DISABLED AND MOSER MEDICAL CONDITION IS WORSENING, DUE TO THE DEFENDANT(S) ACTION AND BEG'S THE COURT FOR APPOINTMENT OF COUNSEL, INJUNCTIVE RELIEF AND TO "DENY" DEFENDANT(S) MOTION TO DISMISS. (NEW U.S. COURT RULING (SUP. CT.) ON A.D.A. EXHAUSTION NOT AVAILABLE TO MOSER AT THIS TIME) (MEDICAL EXHIBIT (D))

5.) PLAINTIFF HAS "EXHAUSTED" ALL ADMINISTRATIVE REMEDIES THAT WERE MADE AVAILABLE TO HIM, (Opposition Filed To Defendant Claim.)

6.) THE PLAINTIFF HAS BEEN GRANTED RE-ROLE, BUT IS UNABLE TO BE RELEASE AS STATED IN (EXHIBIT (C)) D.O.C. DISCRIMINATION TOWARDS THE DISABLE (MOSER), BUT WISHES THE HONORABLE COURT TO KNOW THAT THE PLAINTIFF DOES NOT OPPOSE NEGOTIATING AN AGREEMENT OF SETTLEMENT AND/OR TERMS, WITH THE ASSISTANCE OF COUNSEL AFFORDED TO MOSER, IT IS MOSER INTENTION TO SEE JUSTICE SERVED IN THIS MATTER,

(CONTINUED)

But Refuses said NEGOTIATIONS, until HE (moser) IS FREE on His Respecte which He WAS GRANTED AND USE, AS MOSER FEAR SUCH NEGOTIATIONS WHILE STILL INCARCERATED under THE DEFENDANT'S RULE and Long Reaching ARM of DISCRIMINATION and/or RETALIATION, and so NOTES said CONCERN ALSO, IF THIS ACTIONS IS DISMISSED AT THIS LEVEL OF PROCEEDINGS.

7.) Plaintiff ASK THE Honorable Reserve ALL MOSER APPELLANT Rights Respectfully ..

8.) THE Plaintiff Furthermore, REQUEST THE Honorable Court TO CAREFULLY CONSIDER ALL THE Mitigating and Non-Mitigating Factors of THIS ACTION, and IN CONSIDERING ALL Pending Motions Noting Respectfully to THE COURT:

THAT MOSER IS IN NO MANNER AN ATTORNEY and/or LEGALLY TRAINED, NOT A Lawyer with a LARGE EXPENSE ACCOUNT and LAW LIBRARY ONLINE and/or a LAW DEGREE, But RATHER IS A UNITED STATES CITIZEN whom Happens to Be DISABLED, who STILL BELIEVE'S IN THE U.S. CONSTITUTION written BY THE PEOPLE FOR THE PEOPLE BY, our Founding Father, and ALSO BELIEVE'S THAT JUSTICE UNDER THE "BILL of RIGHTS & U.S. CONST." Should BE AFFORD TO THE "POOR, DISABLED & DISADVANTAGED" (AS IN THIS ACTION MOSER IS AS WELL AS THE WEALTHY (E.E. INSURANCE COMPANY / STATE ATTORNEY OFF

PLEASE ENTER IN FAVOR OF THE Plaintiff, Permitting THIS CASE TO BE Heard IN THE INTEREST of JUSTICE.

— Severe Submissions 98 U.S.C. 1746 —

Respectfully Submitted,

Jeffrey J. Moser

JEFFREY PAUL MOSER (Plaintiff)

- DATED /WT/ COPIED -

DATED 5/25/01

IN THE UNITED STATES DISTRICT COURT, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JEFFERY P. MOSER

vs.

KENNETH KYLE ET AL

CASE NO. # 1:00-CV-1846

* CERTIFICATE OF SERVICE *

I, Jeffery Paul Moser, hereby certify that I have on this date served A Copy of THE Below-Referenced Document(s) upon THE PERSON AND IN THE MANNER Below:

- Brief -

- 1) * Declaration in opposition to defendant motion for Dismissal
2) * Affidavit in support of: Plus Exhibits

SERVICE BY FIRST CLASS MAIL ADDRESSED AS FOLLOWS:

■ SHAWN P. KENNY ESQ.
OFFICE OF CHIEF COUNSEL
55 WHEY DRIVE
CAMPHILL PA. 17011

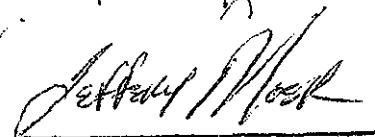
■ JAMES D. YOUNG ESQ.
P.O. BOX 1245
HARRISBURG, PA. 17108-1245

■ CLERK OF COURT
U.S. DISTRICT COURT
228 WALNUT ST
P.O. BOX 983
HARRISBURG, PA 17108
(CERT # 7099 3400 0015 2212 0666)

SWORN TO UNDER THE PENALTY OF PERJURY AS U.S.C. 1746.


(WITNESS)

Respectfully yours,


JEFFERY MOSER (PLAINTIFF)
5/25/01

IN THE UNITED STATES District Court FOR THE
MIDDLE District of Pennsylvania . . .

Jeffery P. Moser

(Plaintiff)

vs.

KENNETH KYLER, ET AL.

(Defendants)

Civil No # 1:00-cv-1846

Jury Trial Demanded

Judge William W. Caldwell

- (BRIEF) -

* DECLARATION IN OPPOSITION TO DEFENDANT'S MOTION FOR
DISMISSAL FOR FAILURE TO EXHAUST ADMIN. REMEDIES . . . *

JEFFERY PAUL MOSER DECLARES UNDER THE PENALTY OF PERJURY:

1.) I AM THE PLAINTIFF OF THE ABOVE MENTIONED CASE, I MAKE
THIS DECLARATION IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS.

2.) THE DEFENDANTS CLAIM THAT MOSER FAILED TO STATE A CLAIM IN
WHICH RELIEF COULD BE GRANTED UNDER R.C.P. (2)(B)(6). MOSER
DISAGREE'S, MOSER BELIEVE'S HE CLEARLY HAS ESTABLISHED VIOLATIONS
OF THE CONSTITUTION AND OF OTHER LAWS THE COURT CAN ENFORCE,

IN EXAMPLE; (AMERICANS WITH DISABILITIES ACT OF 1990 - 42 U.S.C. 1213
IT HAS ALSO BEEN RULED 8TH AMEND. VIOLATIONS, TO DENY DISABLED PRISON
MEDICAL TREATMENT, THERAPY, A.D.A. HOUSES, ETC. (HICKS V. FREY, 992
F.2d 1450, 1456-57 (6th Cir. 1993)) (WEEKS V. CHABODDY, 984 F.2d 185,
187-88 (6th Cir. 1993)) (+ ARMSTRONG V. WILSON, 124 F.3d 1019, (9th Cir. 1999)
A.D.A. AND R.A. APPLIES TO ENMATES IN STATE CORR. INST.) (+ PENNA. D.O.
V. YESKEY, 118 S.Ct. 1952 (1998)) PLAIN TEXT OF TITLE II OF THE AMERICAN
WITH DISABILITIES ACT OF 1990 UNAMBIGUOUSLY EXTENDS TO STATE PRISON ENMATES
(ESTELLE V. GAMBLE, 429 U.S. 97, 50 LE2d 251, . . . 97 S. CT 285 (1976)) ELEMENTS
PRINCIPLES OF CRUEL AND UNUSUAL PUNISHMENT CLAUSE OF THE EIGHTH AMENDMENT
ESTABLISH THE GOVERNMENT'S OBLIGATION TO PROVIDE MEDICAL CARE →

For Those whom IT IS Punishing By INCARCERATION.) ALL ENCLOSED IN (IN EXAMPLE) SECTION OF THIS DECLARATION IN REFERENCE TO CASE LAW AND STANDING REGULATIONS "APPLIES" TO MOSER COMPLAINT AND SHOWS A CLEAR NEED FOR THE HONORABLE COURT HEAR THIS CASE AND DENY THE DEFENDANTS MOTION TO DISMISS,, AS THERE ARE CONSTITUTIONAL VIOLATIONS, IN WHICH RELIEF CAN BE GRANTED, AS A CLAIM HAS BEEN PROPERLY STATED, AND MOSER FEELS THE HONORABLE COURT WOULD FAVOR OF HAVING THIS CASE HEARD, AS DISMISSAL IS A VERY HARSH PENALTY AS STATED IN: (JOHNSON VS. U.S. DEPT. OF TREASURY, 939 F.2d 820 (9th Cir. 1991) (HERNANDEZ VS. CITY OF EL MONTE, 138 F.3d 393 (9th Cir. 1998)) ("DISMISSAL IS HARSH PENALTY AND, THEREFORE, SHOULD NOT BE IMPOSED EXCEPT IN EXTREME CIRCUMSTANCES") FURTHERMORE, MOSER WITHOUT COUNSEL AND WITH HIS DISABILITIES HAS DONE ALL THAT COULD REASONABLY BE EXPECTED OF HIM, TO STATE A CLAIM AND EXHAUST ALL HIS REMEDIES (ADMINISTRATIVE) WITH THIS IN MIND THE COURT ALSO MOSER BELIEVES DEFENDANTS MOTION SHALL BE DENIED. (HIBERNIA NATIONAL BANK VS. CHICAGO TRANSIT AUTHORITY, 774 F.2d 766 (7th Cir. 1985) (FAIR VS. U.S., 378 US 199, 12 LED 2d 763, 84 S.Ct 1689 (1964)).

3.) THE DEFENDANTS CLAIM MOSER (PLAINTIFF) DID NOT EXHAUST ALL HIS ADMINISTRATIVE REMEDIES THROUGH THE COMPLAINT GRIEVANCE SYSTEM (DC-ADM 804) IN VIOLATION OF THE 42 U.S.C. 1997(E)(A) AND 3626(B)(2) OF THE PRISONERS LITIGATION REFORM ACT. THE PLAINTIFF ENTERS HIS OPPOSITIONS TO THIS ALLEGATION, AS THE PLAINTIFF MOSER DID IN FACT EXHAUST ALL AVAILABLE REMEDIES MADE AVAILABLE TO HIM AT S.C.I. FAYETTEVILLE AND S.C.I. HUNTINGDON AND SUBMITTED SUCH TO THE COURT WITH HIS COMPLAINT. PLEASE REFER TO PAGE (7 OF 9) ? (8 OF 9) OF THE COMPLAINT WHICH STATES IN PART WHY DIANA BANEY, PAT YAGER & KENNETH KYLER ARE DEFENDANT IN THIS ACTION. IT WAS THERE BETTER PROVEN BY THEIR ACTIONS, THAT IF THEY JUST DIDN'T ANSWER AND/OR ACKNOWLEDGE, REQUEST, COMPLAINTS AND GRIEVANCES, →

(CONTINUED)

and/or sent them back "UNRECORDED (OR) UN-NUMBERED" with a Broffler Rate Randa statement, stating a Grievance could not be FILED in this matter because Ms. Yager should be contacted first, when in fact Ms. Yager was contacted and NEVER RESPONDED. THAT EXHAUSTION COULD NOT BE MADE AND IF MOSER DID SEEK LITIGATION, THEY WOULD JUST CLAIM MOSER FAILS TO EXHAUST HIS REMEDIES. BY THIS STANDARD AS LONG AS MS. YAGER DID NOT RESPOND MS. BANEY WOULD ~~(OR)~~ Docket ANY GRIEVANCES AND ON (0136-00) THE ONLY (OF MANY) GRIEVANCE FILE THAT GOT ANSWERED BY MS. BANEY IT WAS ~~NOR TIMELY ANSWER~~ BY MR. KYLER AND ~~EVER ANSWERED~~ BY THE HEAD HEARING EXAMINER Robert Bitner. SO MOSER FEELS HE DID EVERYTHING WITHIN HIS POWER AND REQUIREMENTS OF THE PA. U.D.C. AND FEDERAL RULES OF CIVIL PROCEDURE TO EXHAUST ALL THE AVAILABLE ADMINISTRATIVE REMEDIES. FURTHERMORE, NO WHERE IN 42 U.S.C. 1997, (OR) 3626 P.L.R.A. (OR) DC-ADM-804 DOES IT STATE THAT IF THE PRISON OFFICIAL JUST REFUSE TO ACKNOWLEDGE AND/OR ANSWER COMPLAINTS REQUEST FOR GRIEVANCE IN VIOLATION OF THE DUE PROCESS CLAUSES OF THE U.S. CONSTITUTION, THEY CAN HAVE THE PRISONER CIVIL LITIGATION DISMISSED FOR FAILURE TO EXHAUST AND ESCAPE ALL RESPONSIBILITY FOR THEIR ACTIONS WITHIN THE HONORABLE COURT. ALL EXHIBIT'S OF EXHAUSTION HAVE BEEN SUBMITTED TO THE COURT, AND IF REVIEWED BY THE HONORABLE COURT, IT WILL SEE MOSER EVEN FILED A GRIEVANCE ABOUT MS. BANEY REFUSING TO ANSWER GRIEVANCES. IN: LWIN VS. T.N.S., 144 F.3d 505, (7TH CIR. 1998) AGENCIES MUST RESPOND TO THE ARGUMENTS MADE TO THEM, IF MOSER, MAKE EVERY EFFORT TO MEET EXHAUSTION STANDARDS TILL HIS EFFORT HAD BECOME "FUTILE" (UNANSWERED REQUEST, AND/OR GRIEVANCE) AND THE COURT HAS STATED: (EXHAUSTION OF ADMINISTRATIVE REMEDIES IS NOT REQUIRED WHERE IT WOULD BE FUTILE.) (MCCARTHY VS. MADIGAN 112 S.Ct. 1086-88) (TALLAHASSEE MEMORIAL VS. COOK, 109 F.3d 693 (11th Cir. 1997)) (PATSEY VS. BOARD OF REGENTS, 102 S.Ct 2557 (1982)) THEREFORE MOSER HAS EXHAUSTED ALL REMEDIES, AND THE DEFENDANTS MOTION FOR "DISMISSAL" SHOULD BE DENIED.

(CONTINUED)

4.) MOSER DECLARIES ALSO TO THE HONORABLE COURT THAT ATTORNEY "SHAWN P KENNY" STATES IN HIS MOTION THAT "ALL GROUNDS ARE SET FORTH IN THE SUPPORTING BRIEF". MOSER HAS NOT RECEIVED A COPY OF THE "SUPPORTING BRIEF" TO DATE (2nd DAY OF MAY 2001) TO ENTER HIS OPPOSITION, BUT CAN NOT ARGUE WHAT HE HAS NOT BEEN SERVED WITH. (MOSER RECEIVED COPY 5/17/01)

5.) MOSER ASKS THE HONORABLE TO TAKE ON TO CONSIDERATION THAT MOSER IS A UNTRAINED PRO-SE LITIGANT AND WILL ONCE AGAIN ASK FOR RE-CONSIDERATION OR APPOINTMENT OF COUNSEL MOTION AT A LATER DATE, AS MOSER CAN SHOW THE HONORABLE COURT HE HAS CONTACTED SEVERAL ATTORNEY'S, BUT AT THIS TIME CAN NOT AFFORD COPIES TO FILE SAID MOTION. UNTIL THEN MOSER ASK THE COURT TO REFERENCED THE FOLLOWING: (SPENCER U.S. DOES 139 F.3d 107 (and cir. 1998)) (GREEN U.S. BRANSON, 108 F.3d 1296 (10th Cir. 1997)) WHEN CONSIDERING THE PLAINTIFF'S LEGAL SUBMISSIONS.

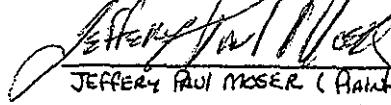
6.) IN MOSER "REQUEST FOR APPOINTMENT OF COUNSEL" THE OPINION FROM THE HONORABLE DID STATE THIS ACTION HAD ARGUABLE MERIT AND SUPPORTIVE EVIDENCE.

* WHEREFORE, OPPOSITION IS HEREBY ENTERED, AND THE PLAINTIFF PRESENTS THE HONORABLE COURT WITH "DENY" DEFENDANT'S MOTION FOR DISMISSAL AND THIS CASE WILL BE SET FOR TRIAL IN THE INTEREST OF JUSTICE. THANK YOU KINDLY...

Resuant to 28 U.S.C. 1746:

(Respectfully Submitted)

5/3/01 RE: 5/3/01
(DATE)


JEFFREY PAUL MOSER (Plaintiff)


SCOTT WILT (witness)

RE: RESUBMITTED
AS. (BRIEF)

→ Exhibit (B) →

U.S. Dept of Justice.

Washington, D.C.

On this 23 day of MAY 2001

3
Jeffery Paul Moser BE 4713
1100 Pike Street SCIH
Huntingdon, PA 16654-1112

Commission on Disabled

Harrisburg Pa.

RE: Disabled Person Requesting Assistance

Greetings:

My name is Jeffery Moser and I am presently incarcerated at S.C.I. Huntingdon, a Pennsylvania Correctional Facility. I am a 'Legally Disabled Person', qualified and approved by:

- a. Federal Medical Center, Fortworth, Texas
- b. Pennsylvania Department of Corrections, Camp Hill, Pa.
- c. Pennsylvania Disabilities Comm.
- d. Social Security Administration-Applicant
- e. Texas Disabilities Comm.-Applicant

My disabilities are due to a spine injury as well as some related mental issues. I am ambulatory at this point of my life, meaning at times I have been confined to a wheelchair, and if I don't receive my needed spinal fussion operation shortly I maybe back in a wheelchair. I must remain on medication to remain ambulatory, but hopefully, after my operation this won't be the case any longer. But for now, I require doctor supervision and medication.

I feel presently, that I am suffering from extreme prejudice & discrimination, due to my disabilities, at the hands of the Pennsylvania Dept. of Corrections. (Community Corrections Division; C.C.C. Region #'s 1, 2, 3)

In short, let me explain :

I was recently granted re-parole by the PA. Board of Probation & Parole (3/30/01) attached exhibit, with the expressed condition that I attend an 'in-patient alcohol treatment (28 days), before returning home to my wife and children and my own doctors, in Reno Nevada. On parole, I'm instructed that I must be assigned a bed 'date' through the Region #1, C.C.C., 1335 Cheltham Ave. Elkin, PA 19027, before I can leave prison on parole.

The problem is, to my understanding, it is a much longer wait for a disabled prisoner to get a 'bed date' and/or released date than a non-

disabled prisoner. So, to my understanding, because I am disabled and on medication, I will be placed, only after all the non-disabled prisoners, IF EVER !

I find this in violation of the Americans With Disabilities Act, 42 U.S.C. 12132; 42 U.S.C.12131:

'Subject to the provision of this title, no qualified individual with a disability, shall, by reason of such disability, be excluded from participation in or denied the equal benefits of services, programs or activities of a public entity. 42 12132

and

'if a disabled prisoner satisfies all the eligibility requirements for some correctional service program or activity, A.D.A. prohibits state officials from discriminating against him or her, by reason of that disability. THIS MEANS STATE OFFICIALS ARE OBLIGATED TO MAKE REASONABLE MODIFICATIONS TO ENSURE THE DISABLED PRISONER IS GRANTED EQUAL ACCESS TO ALL D.O.C.PROGRAMS AND ACTIVITIES. 42 12131(2).

This was also brought to the attention of the United States Supreme Court in Yeskey v. Pa.Dept.of Corrections, 118,U.S.SCT.1952(1998). Plain text of Title II of the Americans With Disabilities Act, unambiguously extends to state prison inmates. Furthermore, it is so stated in Federal Grant Requirements.

'if a program is federally funded in part or in whole, it must be A.D.A. compliant and not discriminate toward the disabled in any manner, or risk forfeiting said grants, funding and/or monies'

All these Depat.of Correction Programs, Community Correction Division, are in some manner, Federally Funded to my understanding.

So, I am asking your agency to enter into this situation, as an advocate on my behalf. Please investigate my claims and assist in anyway your agency possibly can to rectify this situation and stop the discrimination to me.

I presently have a lawsuit pending in part due to A.D.A. violation against the Dept.of Corrections, PA. Moser v. Kyler, 1:00-CU-01846 M.D.PA./ U.S.District CT.

It is not my intention to add this situation to the afore said civil action, it is my intention ONLY to get to an in-patient alcohol treatment program(28 days)as soon as possible so that I can complete the program and return home to my own doctors and receive my spinal operation, also to be reunited with my wife and small children, without further delay due to my disabilities and/or retaliation towards me as a result of this and other correspondence seeking assistance.

I am willing to co operate with any requirement for assistance you might have. Please let me know what I must do to gain your assistance.

I, pray for your help and support in this matter and patiently await your response.

Thank you for your time and consideration in this matter.

Respectfully yours,



Date: 5/23/01

Jeffery Moser
BE 4713 SCIH
1100 Pike Street
Huntingdon, PA. 16654-1112

NOTICE OF BOARD DECISION
PBPP-15 (6/96)

COMMONWEALTH OF PENNSYLVANIA
PENNA. BOARD OF PROBATION AND PAROLE

DATE: 03/30/2001

CLIENT NAME: JEFFREY MOSER
INSTITUTION: SCI - HUNTINGDON

PAROLE NO: 6625W
INSTITUTION NO: BE4713

AS RECORDED ON 03/30/2001 THE BOARD OF PROBATION AND PAROLE RENDERED THE FOLLOWING DECISION IN YOUR CASE:

FOLLOWING AN INTERVIEW AND REVIEW OF YOUR FILE, THE PENNSYLVANIA BOARD OF PROBATION AND PAROLE HAS DETERMINED THAT THE FAIR ADMINISTRATION OF JUSTICE MAY BE ACHIEVED THROUGH YOUR RELEASE ON REPAROLE, AND SUBJECT TO YOUR COMPLIANCE WITH ALL OF THE TERMS AND CONDITIONS OF REPAROLE SUPERVISION. YOU ARE THEREFORE:

REPAROLED TO IN-PATIENT ALCOHOL AND OTHER DRUG TREATMENT PROGRAM. YOU SHALL ENTER INTO AND ACTIVELY PARTICIPATE IN THE IN-PATIENT TREATMENT PROGRAM UNTIL SUCCESSFULLY DISCHARGED BY THE PAROLE SUPERVISION STAFF. YOU SHALL ABIDE BY ALL THE ESTABLISHED RULES AND REGULATIONS OF THE IN-PATIENT TREATMENT PROGRAM. ANY VIOLATION OF THE PROGRAM RULES OR REGULATIONS MAY CONSTITUTE A VIOLATION OF PAROLE AND RESULT IN YOUR ARREST. YOU MUST SIGN AN APPROPRIATE RELEASE FORM FOR CONFIDENTIAL INFORMATION APPROVED HOME TO BE AVAILABLE PRIOR TO RELEASE IF PROGRAM LESS THAN 30 DAYS. BEFORE YOU CAN BE RELEASED, YOU SHALL PROVIDE PROOF OF PAYMENT OF AT LEAST \$30.00 OF MANDATORY COURT COSTS IN ACCORDANCE WITH 18 P.S. {11.1101}.

OUT-PATIENT ALCOHOL TREATMENT IS A SPECIAL CONDITION OF YOUR PAROLE SUPERVISION UNTIL THE TREATMENT SOURCE INDICATES PAROLE SUPERVISION STAFF DETERMINES IT IS NO LONGER NECESSARY. YOU SHALL BE REQUIRED TO SIGN THE

(CONTINUE ON PAGE TWO)

PAROLE VIOLATION MAX DATE: 05/28/2004
CC: DISTRICT ATTORNEY

Kathleen Zwierzyna

KATHLEEN ZWIERZYNA
BOARD SECRETARY

CLIENT COPY

JEFFREY MOSER
SCI - HUNTINGDON
1100 PIKE STREET
HUNTINGDON, PA

BE4713

16654-1112

DC-804

PART 1

Commonwealth of Pennsylvania
Department of Corrections
P.O. Box 598
Camp Hill, PA 17001-0598

*Exhibit attached is an account of
Exhaustion (sec. 6. (B))*

*Commonwealth of Pennsylvania
Department of Corrections
P.O. Box 598
Camp Hill, PA 17001-0598*

OFFICIAL INMATE GRIEVANCE

GRIEVANCE NO. [REDACTED]

TO: GRIEVANCE COORDINATOR <i>S.C.C. Harrington (111-Banana)</i>	INSTITUTION <i>S.C.C. H</i>	DATE <i>5/24/01</i>
FROM: (Commitment Name & Number) <i>Jeffrey Pleasant BE4713</i>	INMATE'S SIGNATURE <i>[Signature]</i>	
WORK ASSIGNMENT <i>Disabled Prisoner</i>	QUARTERS ASSIGNMENT <i>EA-1006 - Double up</i>	

INSTRUCTIONS:

1. Refer to the inmate handbook Page 12 and DC-ADM 804 for information on the inmate grievance system.
2. State your grievance in Block A in a brief and understandable manner.
3. Next, you are required to list in Block B the specific actions you have taken to resolve this matter. Be sure to include the identity of staff members you have contacted.

A. Brief, clear statement of grievance:

** A.D.A. (Request to be removed from VE 14) (F) GRIEVANCE.*

I was recently reassigned to inmate 313012001 and I am told to wait on a waiting list, awaiting a Bed Date from a short-term, compassionate release program at the Hospital Doctor, which is under the authority of the Dr. Doctor. I strongly believe I was being discriminated against for this process, due to my needs medical (including 3 medications (i.e. Disabilities) as I SEE OTHERS WHO ARE NOT DISABLED, GET BED DATES IN THE NEAR FUTURE AND LEAVE PRISON, why I am overlooked due to my needs and/or Disabilities, I am ambulatory if I take medication, and can make it through a short-term program (30days) without a Doctor (if I take the proper medication) I should not constantly be stopped off on the list or Violation of (A.D.A. statute(s) Title 42 U.S.C. § 12132, § 12131).

DC-ADM-804 (V) (E) and I ask for assistance and relief on this matter, PLEASE SEE EXHIBIT

B. Actions taken and staff you have contacted before submitting this grievance:

I wish to get back to my own Doctors of choice, write Prison People about, wrote Health Care Unit, wrote Superintendent Taylor for assistance, spoke to Dr. Hunter, U.S. Justice Dept. (Civil rights and Correctional Counsel Office) (4) separate our assignments from the HEDs (see attached) I have already will the Office of Education (e.com.foe) treat Plaintiff Damage if not resolved Your grievance has been received and will be processed in accordance with DC-ADM 804.

Signature of Grievance Coordinator

Date

—Exhibit (c)—

DC-804

PART 1

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P.O. BOX 598
CAMP HILL, PA. 17001-0598**

OFFICIAL INMATE GRIEVANCE

* NO monetary DAMAGE slot PROVIDED* GRIEVANCE NO.

TO: GRIEVANCE COORDINATOR	INSTITUTION	DATE
FROM: (Commitment Name & Number)	INMATE'S SIGNATURE	
WORK ASSIGNMENT	QUARTERS ASSIGNMENT	

INSTRUCTIONS:

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A. Brief, clear statement of grievance:

B. Actions taken and staff you have contacted before submitting this grievance:

Your grievance has been received and will be processed in accordance with DC-ADM 804.

Signature of Grievance Coordinator

Date

— Exhibit (D) —

J.C. Blair Hospital

Warm Springs Ave
Huntingdon, PA 16652
(814) 643-8684

(M.R.I. Report / RESULTS)

DATE OF M.R.I. 4/23/2001

DATE RECEIVED 5/1/2001 (Dr. Kimber)

IMPRESSIONS:

1.) Post-operative changes, s/p Left Hemilaminectomy at L4-L5 THERE IS A MODERATE SIZED LEFT PARA-CENTRAL DISC HERNIATION AT THIS LEVEL WITH OBLITERATION OF THE FAT IN THE LEFT LATERAL RECESS AND ABUTTING THE L5 NERVE ROOT. THIS MOST LIKELY ACCOUNTS FOR THE PATIENT SYMPTOMS.

2.) THERE IS A SMALL PARA-CENTRAL DISC HERNIATION A L5-S1 WHICH IS MODERATE RIGHT FORMAMINAL NARROWING. THE DISC HERNIATION DOES NOT APPEAR TO ABUT ANY OF THE NERVE ROOTS (OR) DISPLACE THE SACRAL SAC. 3.) EVIDENCE OF CONGENITAL SPINE STENOSIS WITH CONGENITALLY SHORT PEDICLES. (END OF IMPRESSIONS)

AT L3-L4, THERE IS A MILD DIFFUSE DISC BULGE WHICH IN CONJUNCTION WITH CONGENITALLY SHORT PEDICLES, IS PRODUCING MILD CENTRAL CANAL STENOSIS AND MILD TO MODERATE BILATERAL FORMAMINAL NARROWING...

* Copy made out of INMATE'S MEDICAL RECORD, [word for word]
(5-1-2001/10 AM,) PLEASE REFER TO ORIGINAL RECORD AND MOSER Rights
AS A CIVIL Litigant (PRO-SE)... *

* CERTIFICATION OF SERVICE,

I, Jeffrey Moser served Kenneth Kyle, with a true copy of this document, to affirm my need for medical attention and strong pain management medication.

SWEORN TOO: Jeff Moser 5/4/01